IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3068 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHASTRUGHANSINH RAMDHANSINGH CHAUHAN

Versus

A'BAD MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 3068 of 1999

MR RN SHAH for Petitioner No. 1-11

MR PRASHANT G DESAI for Respondent No. 1,3

Mrs. HANSA PUNANI, Ld. AGP for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 24/08/2001

ORAL JUDGEMENT

I have heard Mr.R.N.Shah, learned Counsel

appearing on behalf of the petitioners. I have also heard Mr.P.G.Desai, learned Counsel appearing on behalf of the respondents No.1 and 3 and Mrs.Hansa Punani, learned AGP appearing on behalf of the respondent State.

The petitioners are admittedly unauthorised occupants in the municipal lands situated at Ambawadi area as Final Plots No.43 and 44 of Town Planning Scheme No.21. It is submitted by Mr.Shah, learned Counsel that the petitioners are occupying the said lands, either by constructing their houses or by shop-cabins and they are in possession of the said lands for about 30 years. It is also submitted by Mr.Shah that the petitioners were original tenants under M/s.Jitendra Land Corporation, who got the lands in question from the respondent Corporation. It appears that the said M/s.Jitendra Land Corporation filed eviction Suit against the present petitioners in the City Civil Court and the petitioners also filed a Civil Suit for injunction. However, subsequently the said M/s.Jitendra Land Corporation allotted a separate plot and, therefore, it disclaimed the ownership of the lands at Plots No.43 and 44 of Town Planning Scheme No.21.

The petitioners filed various petitions before this Court as well as Civil Court for continuing in the possession of the disputed lands and by virtue of interim orders passed, either by this Court or by Civil Court, they are still in unauthorised occupation of municipal lands. The respondent Municipal Corporation is, even though, urgently in need of the lands, they are not in a position to utilise the same, because of the interim order passed by various Courts from time to time and the petitioners are continuing their unauthorised occupation in the municipal lands. The petitioners did not file any basic documents to show their right over the disputed lands of Plots No.43 and 44. Therefore, it is obvious that they are unauthorised occupants in the municipal lands.

During the course of arguments, Mr.R.N.Shah, learned Counsel for the petitioners very fairly submitted that the Corporation does not urgently require the lands and, therefore, the petitioners should be allowed to continue in the occupation. This submission has been opposed by Mr.P.G.Desai, learned Counsel appearing on behalf of the respondent Corporation. Mr.Desai submits that the Corporation badly needs the lands as without these lands, the proposed School cannot be set up. Further, due to the continuous process of encroachments, the petitioners have even encroached the public road and

Mr.Desai also submits that the Corporation needs the lands immediately for setting up the School.

Mr.R.N.Shah, learned Counsel for the petitioners submits that the petitioners, even if they are unauthorised encroachers, they cannot be evicted without due process of law. Further, it is submitted by Mr.Shah that the Corporation should arrange alternative accommodation for the petitioners, so that they can run shops and business in the alternative site. I do not find any force in the submission of Mr.Shah. If the occupants have no right to continue their unauthorised occupation in the municipal lands, then they must vacate according to the order passed by the Corporation on 26-4-1999. The respondent Corporation has examined the entire matter and has come to the conclusion that the lands are immediately needed by the Corporation for establishing the School and also for removing obstructions from the public road. When admittedly the petitioners are unauthorised encroachers in the municipal lands and the Corporation needs the lands immediately for the purpose of establishing School and also for clearing the public road, I am of the view that the petitioners must vacate the lands. Mr.Shah, however, prays that a reasonable time may be given to the petitioners, so that they can remove their constructions. It is an admitted fact that the lands are covered by the Town Planning Scheme in Plots No.43 and 44 and Corporation is in need of the lands. Therefore, the petitioners cannot continue with their unauthorised occupation and they must vacate.

However, considering the difficulties of the petitioners in removing the structure and setting up their business elsewhere, I am of the view that a reasonable time should be given to them, so that they can vacate the disputed lands and the Corporation can utilise the same. Accordingly, time is granted to the petitioners upto 31-12-2001 for vacating the lands in dispute, after removing all their structures and belongings from the said lands and in case the petitioners fail to vacate the land by 31-12-2001, the respondent Municipal Corporation will be at liberty to summarily evict the petitioners from the disputed lands. The time upto 31st December, 2001 will be treated as a period of notice and without recourse to further notice, the Corporation will be entitled to evict the petitioners from the said lands after 31st December, 2001 and in that event, the petitioners alone will be responsible for loss and damage of their property and Corporation will not be held liable for any action.

However, the eviction of the petitioners from the disputed lands will not debar the petitioners from applying to the respondent Corporation for allotment of suitable land for setting up their business and if the petitioners apply for such allotment, then the respondent Municipal Corporation may sympathetically consider their case.

With the aforesaid directions, the petition is disposed of. Rule is discharged. The interim order passed on 26-4-1999 is hereby vacated. I make no order as to costs.

24-8-2001 (P. K. Sarkar, J.)

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